

**WEEKLY HIGHLIGHTS AT-A-GLANCE****FEDERAL – Legislative**

- **Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 – S. 245.** (*Update to 1/15/18 Weekly Report*) After passing the Senate in late 2017, [S. 245](#), the “Indian Tribal Energy Development and Self-Determination Act Amendments of 2017,” introduced by Sen. John Hoeven (R-ND), was discharged on November 30, 2018 from the House Committee on Energy and Commerce and placed on the House floor calendar, with no amendments. According to the law firm, Hogan Lovells, if “S. 245 passes Congress in 2018, it will be the first major piece of Indian minerals energy legislation in over a decade” and will open up economic opportunities with private stakeholders to develop tribal energy resources. “The bill aims to allow Indian tribes to exercise greater self-determination over the development of energy resources on their lands, and strives to provide them with financial and technical resources towards that end. One central purpose of the bill is to reinvigorate the previously dormant Tribal Energy Resource Agreement (TERA) program.” The TERA program “provides tribes with the authority to issue leases, business agreements, and rights-of-way for energy projects on their lands” but reportedly never functioned properly so tribes didn’t participate. This bill attempts to address those concerns by creating a more favorable environment for energy development on tribal lands. For example, the bill “allows leases and business agreements that pool, unitize, or communitize a tribe’s energy resources with other energy resources.” Additionally, an “energy-related tribal lease, business agreement, or right-of-way does not require Interior’s approval if it complies with a tribal energy resource agreement or it is a lease with a tribal energy development organization that Interior has certified, and the term does not exceed specified limits.” [Read more.](#)
- **H.R. 7211 – Mineral Leasing Act Amendments.** On November 30, Rep. Darren Soto (D-FL) introduced H.R. 7211 which seeks to amend the Mineral Leasing Act to authorize the Secretary of the Interior to regulate hydraulic fracturing operations on Federal lands. Specifically, the bill would require as a condition of receiving a permit or other authorization under this section that an operator “(1) conduct baseline water testing; and (2) disclose to the public on an Internet website the chemicals used by such operator to conduct hydraulic fracturing operations.” [Read more.](#)
- **H.R. 2606 – Stigler Act Amendments of 2018.** (*Update to 9/17/18 Weekly Report*) On November 29, [H.R. 2606](#), known as the “Stigler Act Amendments of 2018,” was reported out of the Senate Committee on Indian Affairs without amendment and placed on the Senate Legislative Calendar for further consideration. The Republican-sponsored

measure, introduced by Rep. Tom Cole (R-OK), amends the 1947 Stigler Act to revise provisions regarding the restricted fee status of land in Oklahoma allotted to members of the Five Civilized Tribes (Five Tribes). Under current law, the restricted fee status of land allotted to the Five Tribes is maintained only if the individual holding title has one-half or more Native American blood. Under this bill, the restricted fee status is maintained for lineal descendants by blood of an original enrollee whose name appears on the membership rolls of the Five Tribes. According to Oklahoma law firm, Ball Morse Lowe, PLLC, “this change in the law would undoubtedly effect title opinions involving restricted property interests in Five Tribes allotments” and the sale or lease of restricted mineral interests. ([Read more](#)) The current Stigler Act provides that, upon probate, if the heirs and devisees of an original allottee from the Five Tribes (Chickasaw, Choctaw, Seminole, Creek and Cherokee) have passed out of 1/2 degree Native American blood, the allotment loses its “restricted free” status. Restricted land is not subject to state taxation. “I am pleased that the Stigler Act has passed out of the House,” said Rep. Cole. “Amending the Stigler Act will undo this discriminatory law, and allow for past precedent to be current with the realities of Native-owned land. By eliminating the blood quantum requirement, the amendment will support the preservation of the rights and legacies that Native Americans are entitled to, as well as their inheritance.” The sentiment was echoed by Rep. Steve Russell (R-OK), a bill co-sponsor, who said, “I look forward to the Senate approving this legislation and sending it to the President. Our Native American community in Oklahoma will be better off with this good bill signed into law.” [Read more.](#)

- **H.R. 3608 – Endangered Species Transparency and Reasonableness Act.** (*Update to 10/8/18 Weekly Report*) On November 27, [H.R. 3608](#), known as the “Endangered Species Transparency and Reasonableness Act,” was reported by the House Committee on Natural Resources (See [House Report 115-1048](#)) and placed on the Union Calendar for floor consideration. The bill, introduced by Rep. Tom McClintock (R-CA), requires the federal government to disclose, and publish on the Internet, the basis for determinations that species are endangered species or threatened species including all data used prior to any Endangered Species Act (ESA) listing decision. The measure also requires that prior to making ESA determinations affected states must receive all data that is the basis for the determination. Additionally, the bill requires the U.S. Fish and Wildlife Service to track, report to Congress and make available online information on funds expended to respond to ESA lawsuits, such as those brought by environmental activist groups. [Read more.](#)
- **H.R. 6345 – EMPOWERS Act of 2018.** (*Update to 10/8/18 Weekly Report*) On November 27, [H.R. 6345](#), known as the “Ensuring Meaningful Petition Outreach While Enhancing Rights of States Act of 2018” or the “EMPOWERS Act of 2018,” was reported by the House Committee on Natural Resources (See [House Report 115-1051](#)) and placed on the Union Calendar for floor consideration. The bill, introduced by Rep. Stevan Pearce (R-NM), would amend the Endangered Species Act of 1973 to revise the process for

listing, delisting, or reclassifying a species. Before submitting a petition to list a species as threatened or endangered to the Department of the Interior or the Department of Commerce, the petitioner would have to notify each county and state in which the species is located of the intent to submit a petition. Upon finding that the petition may be warranted, the appropriate department must solicit advice from each county and state in which the species is located. [Read more.](#)

- **H.R. 6346 – WHOLE Act of 2018.** (*Update to 10/8/18 Weekly Report*) On November 27, [H.R. 6346](#), known as the “Weigh Habitats Offsetting Locational Effects Act of 2018” or the “WHOLE Act of 2018,” was reported by the House Committee on Natural Resources (See [House Report 115-1050](#)) and placed on the Union Calendar for floor consideration. The bill, introduced by Rep. Mike Johnson (R-LA), would amend the Endangered Species Act of 1973 to revise the process by which the Department of the Interior or the Department of Commerce, as appropriate, reviews an agency action to determine whether the action is likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of the critical habitat of the species. Specifically, the bill requires the appropriate department, when making such a determination, to consider the offsetting effects of protection or conservation measures that are already in place or proposed to be implemented as part of the action. [Read more.](#)

## **FEDERAL – Regulatory**

- **BLM Sage-Grouse Amendments.** On December 7, the U.S. Environmental Protection Agency (EPA) published [Environmental Impact Statements; Notice of Availability](#) (83 Fed. Reg. 63161) to ease restrictions on oil and gas drilling in Greater Sage-Grouse areas. This action begins the process of the Interior Department opening up more public lands to leasing and allowing waivers for drilling in habitat areas. Interior Department Deputy Secretary David Bernhardt said the agency was responding to requests by states to give them more flexibility in how public lands are managed. He said the goal to conserve sage grouse was unchanged. The Trump administration's proposal would reverse or modify the Obama-era protections in seven states — Wyoming, Nevada, Utah, Colorado, California, Idaho and Oregon. [Read more.](#)
- **BLM Oil & Gas Lease Sale – Nevada.** On December 3, the Bureau of Land Management (BLM) announced that it will offer 23 parcels, totaling nearly 40,280.43 acres in the Elko District at its March 2019 quarterly oil and gas lease sale. This notice initiates a public comment period on associated environmental documents that ends on January 3, 2019. The comment period complies with the terms of a [Preliminary Injunction](#) issued by the U.S. District Court of Idaho in [Western Watersheds Project v. Zinke](#) (Case No. 1:18-cv-00187-REB), which required lengthier comment periods on BLM environmental compliance documents associated with parcels that intersect Priority or General Habitat Management Areas for the Greater Sage-Grouse. [Read more.](#)

## **STATE – Legislative**

- **Oil and Gas Production Tax Revenue – Texas.** On December 4, Sen. Kel Seliger (R) introduced a constitutional amendment, SJR 21, to provide for foregoing the transfer of oil and gas production tax revenue to the economic stabilization fund if the ending fund balance for the preceding fiscal year is greater than 10 percent of the prior fiscal year's total net general revenue related collections and for reducing the rates of oil and gas production taxes by amounts sufficient to equal the foregone transfer. [Read more.](#)
- **Severance Tax – Texas.** On December 4, Sen. Kel Seliger (R) introduced SB 214 which amends current law relating to funding for the state economic stabilization fund, including the rates of severance taxes on oil and gas production. [Read more.](#)

## **STATE – Judicial**

- **Dormant Mineral Act – Ohio.** On November 26, Ohio's Seventh District Court of Appeals once again addressed the amount of diligence required to identify holders of severed mineral interests under the 2006 version of the Ohio Dormant Mineral Act (DMA). In [Sharp v. Miller](#) (Case No. 2018-Ohio-4740), the court reaffirmed an earlier ruling that the 2006 DMA only requires a surface owner to exercise reasonable due diligence to ascertain the names and addresses of mineral holders prior to serving its notice of abandonment by publication. The Court further held that whether a surface owner's actions constitute "reasonable due diligence" will depend on the facts and circumstances of each individual case. According to law firm, Vorys, "Thus, there is no right-line rule or definition of 'reasonable due diligence.' Actions that may be reasonable in one case may not be reasonable in another case." [Read more.](#)
- **Leasing: Production – Ohio.** On November 19, in *Victor v. Big Sky Energy, Inc.* (Case No. 2017-A-0045), the Ohio Court of Appeals, Eleventh District, addressed one of the primary case issues of whether an oil and gas lease may be terminated when no oil or gas is produced for a period of three years. The court held that the oil and gas lease at issue expired for lack of production during a three-year period predating acquisition of the lease by the defendant production company even though production ensued following the acquisition and plaintiff landowners accepted royalty payments. [Read more.](#)
- **Mineral Estates; Wills; Heirs; Distributions – Pennsylvania.** On November 20, in *In Re: Estate of Leroy Bryan* (Case No. 1498 WDA 2017), the Superior Court of Pennsylvania reversed a trial court ruling that amended "the royalty percentages allotted to the three named beneficiaries." In vacating that ruling, the Superior Court held instead that "the three named beneficiaries are entitled to their plainly delineated percentage of gas and oil royalties as clearly set forth in the will." The court also addressed issues involving future interests and rejected the trial court's suggestion

that there were no future equitable remedies available to certain beneficiaries and instead noted that a court may impose a constructive trust as an equitable remedy to prevent unjust enrichment. [Read more.](#)

### **INDUSTRY NEWS FLASH:**

#### **◆ Permian formations hold largest potential oil and gas resources ever assessed.**

According to a new U.S. Geological Survey assessment, the Wolfcamp shale and overlying Bone Spring in the Permian's booming Delaware Basin hold the most potential oil and gas resources ever assessed – an estimated 46.3 billion barrels of oil, 281 trillion cubic feet of natural gas, and 20 billion barrels of natural gas liquids. "Before this assessment came down, I was bullish on oil and gas production in the United States," said Interior Secretary Ryan Zinke. "Now, I know for a fact that American energy dominance is within our grasp as a nation." [Read more.](#)

## **State-by-State Legislative Session Overview**

**Michigan, New Jersey and Ohio** are in regular session. The **District of Columbia, Puerto Rico** and the **United States** Congress are also in regular session. **Maine** is in recess until January 2. **California** is in recess until January 7. **Illinois, Massachusetts, New York and Rhode Island** are in recess to the call of the chair.

**North Carolina** convened a special session on November 27 to vote on implementation legislation for voter identification requirements passed by constituents on November 6 during the midterm elections, according to the [North Carolina Legislative website](#).

**Utah** adjourned their one-day special session on December 3. Both the Senate and House voted by large margins to pass a sweeping medical marijuana bill, reports [Desert News](#).

**Wisconsin** adjourned their special session on December 4. Following overnight debate, lawmakers voted on Wednesday to restrict Democratic Gov.-elect Tony Evers from implementing certain policies that he campaigned on during the election, including removing his power to pull the state from a multistate lawsuit challenging the Affordable Care Act, reports [The Hill](#).

**Maine** Republican Gov. Paul LePage has until December 8 to act on special session legislation or it becomes law without signature. **California's** Democratic Gov. Jerry Brown has 12 days from presentment to act on legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner has 60 calendar days while the legislature is in session to act on legislation or it becomes law without signature. **Missouri** Republican Gov. Mike Parson has 45 days from presentment to act on legislation or it becomes law without signature. **New York** Democratic

Gov. Andrew Cuomo has 10 days from presentment, Sundays excepted, to sign or veto legislation or it becomes law without signature. **North Carolina** Democratic Gov. Roy Cooper has 10 days from presentment to act on special session legislation or it becomes law without signature. **Rhode Island** Democratic Gov. Gina Raimondo has six days from presentment, Sundays excepted, to act on legislation or it becomes law without signature. **Wisconsin** Republican Gov. Scott Walker has six days, Sundays excepted, to act on legislation or it becomes law without signature.

The following states are currently holding 2019 interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [California Assembly](#) and [Senate](#), [Colorado](#), [Connecticut](#), [Florida House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois Senate](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Hampshire House](#) and [Senate](#), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#), [Oregon](#), [Rhode Island](#), [South Carolina](#), [South Dakota](#), [Tennessee](#), [Texas House](#) and [Senate](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#), [Wisconsin](#) and [Wyoming](#).

The following states are currently posting 2019 bill drafts, prefiles and interim studies: [Arkansas](#), [Florida House](#) and [Senate](#), [Georgia](#), [Indiana](#), [Iowa](#), [Kansas Senate](#), [Kentucky](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Tennessee](#), [Texas](#), [Utah](#), [Virginia](#) and [Washington](#).

## Special Elections

**Georgia** held a special election for House District 28 on December 4 between Incumbent Dan Gasaway, R-Homer, and Chris Erwin, R-Banks County. According to the Secretary of State's office, only three ballots separated Gasaway and Erwin. Currently the race is not over as absentee ballots that are received by December 7 will be included in the vote total, reports [11 Alive News](#).

The following seats will be filled by special election on the dates provided: **Louisiana** runoff for House District 90 (December 8), **Texas** Senate District 6 (December 11), **Georgia** House District 14 and **Virginia** House District 24 (December 18) and **Virginia** Senate District 33 (January 8).

## Hydraulic Fracturing

### General

**New Jersey** [ACR 208](#), sponsored by Asm. Andrew Zwicker, D-South Brunswick, was referred to the Assembly Environment and Solid Waste Committee on December 6. The resolution would urge the governor to block a proposed rule permitting the storage, treatment, disposal and discharge of wastewater generated from hydraulic fracturing in the Delaware River Basin. The Senate companion, [SCR 150](#), sponsored by Sen. Christopher Bateman, R-Branchburg Township, passed the Senate Environment and Energy Committee on December 3.

**Ohio SB 217**, sponsored by Sen. Joe Schiavoni, D-Boardman, was heard in the Senate Natural Resources Committee on December 5. The committee heard testimony from Representative Schiavoni but did not vote on the bill during the hearing. The bill would require the Chief of the Division of Oil and Gas Resources Management to revoke and deny any future applications for any permit issued if the permit holder is convicted of or pleads guilty to improper disposal of brines. The bill would also specify that a knowing violation of these provisions is a felony and would permit the sentencing court to require the violator to reimburse the state or any political subdivision for the costs of responding to the violation.

## Landmen

### Independent Contractors

**California AB 5**, sponsored by Asm. Lorena Gonzales, D-San Diego, was introduced on December 3 and has not yet been referred to a committee. This placeholder bill would state the intent of the legislature to include provisions within this bill that would codify the state Supreme Court case *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* and clarify its application. According to *Forbes*, the decision saw the court adopt a standard that presumes that all workers are employees instead of independent contractors. Under the “ABC” test a worker can only be classified as an independent contractor if the hiring business demonstrates that the worker meets the following three conditions:

- That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- That the worker performs work that is outside the usual course of the hiring entity’s business.
- That the worker is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

Another bill relating to the ruling, **AB 71**, sponsored by Asm. Melissa Melendez, R-Lake Elsinore, would codify into law the previous “Borello Test” that had been the basis for hiring or using independent contractors prior to the court’s most recent decision. A full press release from Assembly member Melendez can be found [here](#).

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